1956

Why Neglect Comparative Taxation

John C. Chommie

WHY NEGLECT COMPARATIVE TAXATION?

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"The difficult task before the comparative lawyer is that of reading the technical results against the light of a more general political, social, and historical experience."[1]

In appraising the value of making comparative legal studies legal writers have suggested that such research. (1) gives one greater insight into his own legal system; (2) aids in the preparation of legislation; (3) provides stimulus for reform; (4) enables the practitioner to communicate with foreign lawyers; (5) provides a basis for securing uniformity; (6) spurs the development of a legal science; and, (7) is an "integral component of any programme designed to further international understanding and peace."[2]

The purpose of this article is not to reappraise these values in a tax context, but merely to suggest some profitable lines of inquiry for the student of comparative law to follow in comparing income tax problems in the United States and Canada. Although some limited comparisons between Dominion and Federal tax laws have been conducted, few have been published in the United States.[3] The pursuit of useful lines of inquiry will be conducted under these headings: (I) Legislative Policy-Making; (II) The Administrative Process; and, (III) The Judicial Process.

I. LEGISLATIVE POLICY-MAKING

The prime policy-maker in both the United States and Canada is, of course, the legislature. An adequate investigation of its function, however, must center around the tremendous task of analyzing the forces influencing it. To reduce the enormity of the task only three aspects of legislative policy-making will be discussed

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1. Pekelis, *Legal Techniques and Political Idiologies: A Comparative Study,* 41 Mich. L. Rev. 665 (1943).

2. *Declaration of the Preparatory Committee for the Establishment of an International Comparative Law Association,* UNESCO/SS/EDC/10, 18 April 1949, cited in Schlesinger, Comparative Law 30 (1950).

3. The utility of tax comparison has been recognized. *E.g.,* "The purpose of this article is to outline the principal features of the Canadian law of income taxation as it applies to the petroleum industry. *In an attempt to achieve a better understanding of the law of Canada in this field, some comparisons with the law of the United States may be useful.* There is nothing new about this particular method of inquiry. . . . The general subject requires, however, more detailed exposition in order to meet the requirements of practitioners who must work with the law from day to day." McDonald, *The Tax Treatment of Oil and Gas Transactions,* 31 Can. B. Rev. 158 (1953). (Emphasis added.)

here (1) the social forces affecting policy-making, (2) the role of the executive in policy-making, and, (3) the major policy issues.

Social Forces Affecting Policy-Making. The restriction of inquiry to specific legal problems leads to what Professor Rheinstein has characterized as the mere "monographic or synoptic description of legal rules and institutes."[4] In order, therefore, to obtain some social background to legislative action, economic and political forces should be studied, since these are, by observation, the most pertinent in any study of tax policy-making.

For the purposes of a Canada-United States tax comparison most facets of economic culture can be assumed similar, since economic theory has not been greatly nationalized throughout the western world. The student, nevertheless, must investigate the economic background of the particular legal problem under comparison. For example, in a study of a similar income tax problem of the two systems, attention should be given to the relative tax burden on the groups involved as well as the position of the income tax in the whole structure. And viewing the effects of taxation as a type of economic force it seems the conceptions here cannot be safely ignored. In appraising economic forces we must often operate as Randolph Paul has said on "cloudy conjecture."[5] In any comparative study, however, limitations based on uncertain underlying economic data are going to present themselves and it will be necessary to work with the empirical evidence that is available.

The investigation of political forces allows even fewer assumptions of similarity than does a survey of economic forces. Here, however, in one sense the task of the lawyer-researcher would not seem as dfficult, in a broad sense legislative techniques and methods are important components of the modern legal discipline. In any

4. Rheinstein, *Teaching Comparative Law,* 5 U. Chi. L. Rev. 615 (1938).

"There are certain dangers in the comparison of solutions to problems reached by various legal systems. There is the danger of superficiality, the temptation to conclude that since the defendant is liable under similar facts in Peru and Michigan therefore the laws are the same. Hence it is suggested that a conception of the end of 'comparative' law as the comparison of laws of various countries by examining the solutions reached to specific problems does not state the whole purpose, since it fails to take into account the important factor that one of the keys to the interpretation of the result may well lie in the method which has been employed." Stone, *The End To Be Served by Comparative Law,* 25 Tul. L. Rev. 325, 329-330 (1951).

"Yet one must not disparage unduly comparative law as a mere comparison of laws or rules of law. Rules of law are a necessary and highly important element in any body of authoritative legal materials. They cannot be too well considered or too well formulated." Pound, *What May We Expect From Comparative Law?,* 22 A. B. A. J. 56, 57 (1936).

5. Paul, Taxation In The United States 753 (1954).

event; especially demanding of inquiry are comparisons of legislative machinery and the pressure group activity successful and unsuccessful in influencing the legislature. A study of these social forces should lay the groundwork for the student's more detailed comparison.

The Role of the Executive in Legislative Policy-Making. Both in Canada and in the United States the Government and the Administration perform a vital role in the initiation of tax measures. Yet there seem to be sufficient differences, springing to some extent from the differences in the nature of party solidarity, as to affect markedly the final legislative policy expression. The Cabinet in Canada is more dominant than its counterpart in the United States, and the "backbenchers" do not seem to provide the stabilizing (or obstructionist, depending on the viewpoint) force characteristic of the minority party in the United States Congress.[6]

The part played by these differences demands that they be taken into account in drawing conclusions in many problem studies. They command attention particularly in considering such vital policy issues as statutory complexity where the role of political compromise is so important.

Major Policy Issues. Most real conflict in the legislative taxing process seems to center in the area of the distribution of the tax load. It is here that comparison with treatment in Canada might well prove to be most rewarding. Comparative lawyers have long recognized the value of comparative studies as aids in the preparation of legislation.[7] But aside from a few studies conducted by the Treasury,[8] comparative research of this type does not seem to have intrigued even the more competent tax scholars in the United States.

At a second level of policy-making—the policies determining

6. For a recent comment on the dominant role of the Cabinet in the legislative process of Canada see Professor Willis' remarks in Note, 29 Can. B. Rev. 296 (1951). For an excellent discussion of the role of the executive in making tax policy in the United States see Blough, The Federal Taxing Process (1952).

7. Professor Escarra relates: "Thus, immediately after the founding of this society [of Comparative Legislation in 1869] the practice appeared in France of accompanying drafts of a proposed law submitted to Parliament, with accounts of the legislation on the same subject in other countries." Escarra, *The Aims of Comparative Law,* 7 Temp. L. Q. 296, 300 (1933).

8. Dr. Blough relates one reaction to one comparative study made by the Treasury during the hearings preceding the 1943 Revenue Act: "An informational pamphlet of the Treasury's Division of Tax Research comparing excise taxes in the United States, Canada, and Great Britain was condemned as propaganda for the Treasury tax views by a prominent Republican member of the Appropriations Committee." Blough, *op. cit. supra* note 6, at 261.

the technical tax structure—comparisons might also prove fruitful. It is here that a considerable divergence may be found that could lead to valuable insights to the social forces bearing on existing policies in both systems. For example, a comparative study of the reasons behind Canada's refusal to recognize intra-family transfers of income producing property[9] or a comparison of the tax treatment of family partnerships might well provide the needed insights for reform in both countries. And Canada's general exclusion of capital gains from taxation is another example of the differences in tax load distribution between the two countries. A study here may well provide aid in solving the perplexing problem of preferential treatment of capital gains taxation in the United States.

Provisions setting the pattern of general administration, review, and returns, however, may not require a close study of backing social forces, since these rules affect all taxpayers. But even here mere descriptive comparison of the effectiveness of these laws should prove valuable.

In sum, clarification of the social forces that create the major policy issues, particularly in the tax load distributive area, is such an important function in a democratic order, that the hard-pressed policy-maker needs all possible aid to enable him to render sound value judgments. Canadian comparison is one further aid researchers can give him.

II. The Administrative Process

The range of inquiry into the administrative process, of course, depends upon the purpose behind the investigation. The tax practitioner, the legislative policy-maker, and the Treasury Department each might be interested in different aspects of the problem of administrative enforcement. Broadly, however, it would seem that valuable comparisons could be made in considering such problems as auditing procedures, penal sanctions, judicial reaction to enforcement policies, uniformity of administration, and the effectiveness of enforcement within particular economic groups. For example, in both countries self-assessment of income tax is a basic administrative technique. Yet in the United States the effectiveness of the income tax through the collection technique of withholding is considered notoriously high on income from wages and salaries compared to income from agricultural activities and others outside the orbit of the withholding provisions. A comparative study here might

9. Income Tax Act, R. S. C. c. 148 (1952), §§ 21-22 (Canada).

well provide the understanding needed for a more effective and fair enforcement policy in the United States.

The most serious obstacle in conducting studies in the administrative area is the lack of descriptive materials. Apparently much of the needed material can be supplied only by on-the-spot studies of enforcement conducted by competent tax scholars with practical experience in tax administration.[10] And flowing from a less complex system is a second limiting factor: lack of Canadian experience with comparable enforcement techniques.

Despite these limitations productive comparisons of tax administrative problems can still be made. One possible comparison is Canada's use of broad ministerial discretion as opposed to the limited discretion given the Commissioner of Internal Revenue. The history of ministerial discretion in Canada can be related in terms of the struggle of the organized professions—accounting and law—to reduce such discretion in the administration of the income tax. When the Income Tax Act was being considered in 1948 it was stated to a special committee of the Canadian Senate that "appearances of discretionary power ... [o]curred in 95 sections or subsections" of the Income War Tax Act.[11] With the enactment of the Income Tax Act most of these discretionary powers were withdrawn from the Minister. Section 138 of the Act, however, gives a broad discretion to the Treasury Board to ignore transactions where "one of the main purposes for a transaction . . was the improper avoidance or reduction of taxes. . . ."[12] No American

10. Professor Schwartz conducted two such on-the-spot inquiries in his general investigations of English and French administrative law. See Schwartz, Law and the Executive in Britain: A Comparative Study (1949); Schwartz, French Administrative Law and the Common Law World (1954).

11. Canadian Tax Foundation, *The Income Tax Revision,* 25 Can. B. Rev. 1121, 1126 (1947).

12. Section 138(1) of the Act provides: "Where the Treasury Board has decided that one of the main purposes for a transaction or transactions effected before or after the coming into force of this Act was improper avoidance or reduction of taxes that might otherwise have become payable under this Act, the *Income War Tax Act,* or *The Excess Profits Tax Act, 1940,* the Treasury Board may give such directions as it considers appropriate to counteract the avoidance or reduction." Section 138(3) provides: "Where a direction has been given under this section, tax shall be collected or assessed or re-assessed and collected, notwithstanding any other provision of this or any other Act in accordance therewith."

The Treasury Board, a committee of the Cabinet, "consists of the Minister of Finance . . and any five members of the Queens Privy Council for Canada. . The Deputy Minister of Finance is the ex-officio secretary of the Board." CCH, Canadian Master Tax Guide 275 (10th ed. 1955).

Sections 138(1) and (3), identical in wording with §§ 126(1) and (3) of the 1948 Income Tax Act, have been bitterly attacked by committees of the Canadian Bar Association and the Dominion Association of Chartered Accountants. *Recommendations for Amendment of the Income Tax Act,* 27 Can. B. Rev. 443 (1949). *Cf.,* Willis, *Recent Trends in Canadian Income Tax Law,* 9 U. Toronto L. J. 42, 46-49 (1951).

Congress has ever exhibited such confidence (or faith) in the Secretary of Treasury or the Commissioner of Internal Revenue.[13] It should be noted that generally an exercise of ministerial discretion under the Income War Tax Act was reviewable by the courts, but the scope of review was quite limited. Since 1948, however, it seems that section 138 stands to a large extent as a "silent policeman," seldom exercised, but ever present to haunt the Canadian tax planner in much the same manner as "Gregory's Ghost"[14] haunts the tax lawyer planning a corporate reorganization in the United States.

Undoubtedly many forces have contributed to Canadian confidence in ministerial discretion and the suspicion with which it has apparently been viewed in the United States. This, however, is no place for a brief on either side of the controversial problem. It is enough to note that the problem exists as a possible fruitful area for comparative study

III. The Judicial Process

A comparative tax study involving the United States and Canada that ignored the judicial machinery and techniques of the two countries would run the risk of superficiality For this reason the research student should examine comparative tax problems in the light of these aspects of the judicial process (1) the machinery of review, (2) the techniques of interpretation, and, (3) the notions of the judicial function. Following these discussions a final note will be added on the interpretative issues.

The Machinery of Review. A comparison of policy or interpretative problems must include a consideration of the taxpayer's right to be heard. Awareness of the fundamental notion common to the United States and Canada (and perhaps to all of the western world) of a day in court is clearly not enough. Adequate comparison requires answers to such questions as these How are disputes with the collector handled? What machinery is available for settling disputes? Who has the burden of proof?

Although the functioning of the Tax Court of the United States as an independent specialized organ has won widespread satisfaction, development of a similar court in Canada is in an incipient

13. Even the Commissioner's traditional power over accounting procedures has, to some extent, been invaded by the LIFO provisions of the Code. And judicial limitations on § 482 (§ 45 of the 1939 Code) and § 269 (§ 129 of the 1939 Code) are well known chapters in the history of administrative discretion in the United States.

14. Gregory v. Helvering, 293 U. S. 465 (1935)

stage. A survey of the first thirty years of income taxation in Canada is as difficult at the judicial level as at the administrative level for much the same reasons. The Exchequer Court, Supreme Court, and Privy Council have produced few cases.[15] Lacking both materials and a unifying court such as our Tax Court the student's first inclination in comparing enforcement at the trial level will probably be to turn to the administrative process for techniques furnishing a similar function. Such an approach, however, can only lead to conjecture, since the Minister with his broad discretion issues few regulations and no rulings. While this state of affairs in Canada hardly resulted in the calamity often predicted in such situations, it certainly was not conducive to an orderly development of a body of tax law responsive to the needs of a democratic order. It was bound to meet resistance if for no other reason than that it was shrouded in secrecy.[16] Undoubtedly this overpaints the picture. But assuming its essential accuracy its full story could well serve as an object lesson in administrative discretion.

In the attempts at solution of the problem of ministerial discretion with a system of appeals, Canadians had, in 1948, at least two established systems in the common law world upon which to draw—the United States and the United Kingdom. In broad outlines the Income Tax Appeal Board that was established in Canada resembles more the structure of the Tax Court than the localized English system of Commissioners of Income Tax. The Canadian structure of course has features of its own such as permitting a by-passing of the Appeal Board by the taking of an appeal direct to the Exchequer Court. A detailed description of the system, however, is not intended here. It is enough to suggest the significance for comparative study of the 1948 reforms including the establish-

15. It has been pointed out that "less than 150 tax appeals" were decided by the Exchequer Court between 1917 (the date of the enactment of the first income tax) and 1947. Thom, *Appeal Procedure under the Income Tax Act*, 29 Can. B. Rev. 139, 140 (1951).

16. "This situation [the broad ministerial discretion in the Income War Tax Act] has undesirable consequences for all concerned. For the taxpayer the position is inequitable in principle because it is uncertain in practice. Perhaps the gravest practical objection is delay and difficulty in determining actual or prospective tax liability in cases which depend upon the Minister's decision.

"For the administration, the scope of the powers involved and the absence of judicial guidance have prevented the development of uniform and tested principles which the extent of the Minister's responsibility requires to support it and which the taxpayer is entitled to know.

"For the law itself, the same factors lead into the dark; and, lacking the opinion of the courts upon any of the matters thus removed from their jurisdiction, Parliament has not been in a position to review and restate the law in the light of experience." Canadian Tax Foundation, *supra* note 11, at 1126-1127.

ment of the Income Tax Appeal Board as a substitute for many of the withdrawn ministerial discretionary powers.

From the Canadian viewpoint the thirty years' experience of the United States with the Tax Court should provide a mine of information from which to draw material for adaptation to Canadian conditions in developing the Income Tax Appeal Board into a more useful institution. This has in fact been suggested by a prominent member of the Canadian tax bar.[17] From the viewpoint of reform in the United States a number of values may be obtained. For example, Canadian experience with appeals to a single federal tribunal (the Exchequer Court) should prove to be of some value with regard to the perplexing problem in the United States of ten courts of appeal often rendering conflicting decisions. Perhaps the well-known Griswold Plan for a single court of tax appeals could be profitably re-examined in the light of Canadian experience with the Exchequer Court.

The Techniques of Interpretation. The values flowing from clearer insights to the juristic reasoning process are self-evident. Comparative lawyers have long recognized the worth of the comparative method for this purpose. In a tax context, however, little progress has been made in this area. It is suggested that a comparison of United States and Canadian interpretative techniques would prove fruitful along two lines of inquiry First, for the purpose of evaluating results in a comparative study of any tax policy problem. Second, for the purpose of gaining insights to the problem of interpreting tax legislation on both sides of the border.

In the first place where the purpose of inquiry is a policy or substantive problem, a careful consideration of the techniques and methods of interpretation for evaluation purposes seems indispensable. The crucial nature of this problem for the comparative tax research student is ably demonstrated in a recent work of Professor LaBrie entitled *The Meaning of Income in The Law of Income Tax.*[18]

This work is limited to a critical analysis of the English and Canadian case law which is background to some of the major income tax problems in Canada. As such it has received excellent reviews by competent Canadian tax scholars.[19] But it is more. While directed to what LaBrie considers the failure of both Eng-

17 Thom. *Appeal Procedure under the Income Tax Act,* 29 Can. B. Rev. 139, 145-146 (1951).

18. Toronto University of Toronto Press (1953)

19. *E.g.,* Covert, Book Review, 10 U. Toronto L. J. 288 (1954), Vineberg, Book Review, 31 Can. B. Rev. 831 (1953).

lish and Canadian courts to reflect correctly business principles in developing a legal income concept for tax purposes, the book is revealing of Canadian and English judicial techniques in the taxing process. Here, as distinguished from the liberal practices of the American courts, is a judicial interpretative methodology largely limited to a scrupulous regard for the words of a statute and the doctrine of *stare decisis*. Largely ignored are underlying commercial practices and, except for some lip service paid to what is termed the "mischief rule,"[20] an almost total disregard of legislative history. Professor LaBrie's own analysis, devoted almost exclusively to tax concepts and precedents, echoes the Canadian juristic reasoning process in the tax context. While there may be some doubt that English and Canadian judges have been as literal as is often alleged, it seems clear that there is little in the English-Canadian interpretative history that resembles the trend in the United States illustrated by such landmarks as the *Horst-Eubank, Clifford, Gregory* and *Earl* cases.[21] It is therefore evident that in evaluating judicial behavior in a comparative tax study the differences in the use of techniques of interpretation in the United States and Canada must be taken into consideration.

In the second place where the purpose of inquiry is method itself, as distinguished from a policy or substantive problem, comparison would also seem to be fruitful. A scrupulous regard for the words of a statute is hardly an undesirable judicial characteristic. Nor, it is suggested, is judicial effort to get at the policy of a statute by resort to underlying social facts and legislative history It would seem evident that tax students on both sides of the border could learn much from each other that would give greater insight to interpretative methodology at home.

From a United States viewpoint the tax student could possibly profit in a perusal of Canadian decisions, particularly as articulated by Professor LaBrie in his formulation and use of legal concepts. For example, we admit of a large and growing body of judge-made or common law in federal tax jurisprudence. Yet its full utilization demands articulation beyond efforts made along this line to date. Professor LaBrie shows the Canadian and English judges at their literal best. It should be noted that though his manuscript was essentially completed before the advent of the Income Tax Appeal

20. For a recent analysis of Canadian cases, consisting largely of court and Appeal Board tax opinions, indicating a liberal trend in interpretation, see McGregor, *Literal or Liberal?*, 32 Can. B. Rev. 281 (1954).

21. Helvering v. Eubank, 311 U. S. 122 (1940); Helvering v. Horst, 311 U. S. 112 (1940); Helvering v. Clifford, 309 U. S. 331 (1940); Gregory v. Helvering, 293 U. S. 465 (1935); Lucas v. Earl, 281 U. S. 111 (1930).

Board, as was pointed out by one of his reviewers,[22] what evidence there is indicates that the Board is committed to the same literal approach.[23]

From a Canadian viewpoint the judicious use of legislative history and social facts in the United States may reveal some of the short-comings of a strict interpretative method. For example, it may be that the strict interpretation of the Canadian courts is one of the primary causes of the Income Tax Act's rigid rules against evasion with their frequent resultant hardship in individual cases. And strict interpretation may also reveal that the process of milking each word for meaning may result in ignoring the limitations of words in conveying ideas or thoughts.[24]

In sum, there would seem to be few surer roads to an understanding of the juristic reasoning process than by a comparison of the manner in which judges handle such matters as legal concepts, precedents, social facts and legislative history

Notions of the Judicial Function. Intimately related to the various techniques of interpretation is the matter of the notions of the proper judicial function of a court in the tax structure of a democratic order. This matter, however, is difficult to discuss out of the context of a particular problem. It is most often analyzed in the context of the function of a court to prevent evasion or in

22. Vineberg, *supra* note 19.

23. "It can, I think, be safely said that there are not, and are not likely to be, any 'trends' in interpretation. The Canadian courts stick, and will probably continue to stick, closely to the time-honoured rule of Partington v. Attorney-General that 'if the Crown cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, when you can simply adhere to the words of the statute.' [(1869) L. R. 4 H. L. 100, 122 (*per* Lord Cairns)]." Willis, *Recent Trends In Canadian Income Tax Law*, 9 U. Toronto L. J. 42, 42-43 (1951)

24. Professor LaBrie has collaborated with J. R. Westlake in a monograph. Deductions under the Income War Tax Act: A Return to Business Principles (1948). This work appears to be a preview of Part III, "Deductions," in LaBrie's The Meaning of Income in the Law of Income Tax. The monograph has been critically reviewed by Professor Laskin wherein the limitations inherent in analysis limited to the literal words of a statute are ably pointed out: "It is this reviewer's submission that there are limits to the squeezing of words of a statute to make them distil a particular kind of juice. If it be permissible to make the distinction, the fault which the authors find lies more in the application of the statute than in its mere construction. They contend that the courts, and especially the Supreme Court of Canada, have not construed the statute in terms of commonly accepted business principles. But since the courts have insisted that they are applying business principles, the quarrel between them and the authors can hardly be resolved by insistence on a more scrupulous regard for the words of the statute. The solution lies outside the statute." Laskin, Book Review, 8 U. Toronto L. J. 185 (1949).

connection with the desirability of giving relief in hardship cases.[25] Both subjects, judicial avoidance of evasion and affordance of relief, when examined in the context of the whole taxing process should be valuable subjects of comparison. In Canada, of course, this function is largely performed by the Minister or Treasury Board in using their discretionary powers.

Perhaps the principal value flowing from comparison of the notions of the judicial function in tax controversies would be the contribution such studies might make toward the development of tax theory. Most students of taxation would admit the lack of a satisfactorily developed tax theory in the United States. For example, progressive taxation in the federal tax structure is accepted as a political reality. Yet notwithstanding an extreme expenditure of intellectual energy in attempts to justify it, it can be demonstrated that we are in reality paying but lip service to the ability-to-pay principle; that the tax structure as a whole is regressive and ability-to-pay has no real meaning except in the nebulous area of taxpayer morale. If this is true, it suggests an area of danger in a democratic order.

In a search for an approach that will lead to a satisfactory tax theory, perhaps we can profit from Professor Stone's recent suggestion that comparison of laws leads to comparison of methods used to implement the laws and "from a study of the methods employed we are led to a study of the forces behind the selection of method, in other words to the legal theories."[26]

The Interpretative Issues. Of primary interest to many tax practitioners would be comparative studies of interpretative issues. Here, of course, it has long been recognized that precedent from other fiscal systems is of limited value. Except for an occasional reference to English cases in some of the early tax opinions foreign precedents are rarely used in the United States. The dangers inherent in the use of foreign decisions are readily apparent. Where the foreign decision involves the interpretation of a foreign statute

25. See, *e.g.*, LaBrie, *The Role of the Courts In Tax Avoidance*, 3 Can. Tax J. 326 (1955).

26. Stone, *The End To Be Served By Comparative Law*, 25 Tul. L. Rev. 325, 331 (1951).

"Just as the spirit of every language manifests itself in the peculiar meaning and scope of words for which there is no exact translation in other languages, so also the more pronounced characteristics of each legal system express themselves in concepts which have no exact equivalent. In other words, one and the same reality is not abbreviated or symbolized in the same way by the concepts of the various legal systems. Consequently, in order to understand the reasoning process of a jurist, it is most desirable to go outside the boundaries of one's own intellectual environment." Brutau, *Realism in Comparative Law*, 3 Am. J. Comp. L. 42, 43 (1954). (Footnotes omitted.)

it is clear that, except in rare instances where the foreign statute is *pari materia* with the local statute, the use of the foreign interpretation would not only be valueless but dangerous. It is interesting to note, however, the contrast between the United States and Canada in the use of foreign decisions and the light that such contrast sheds on the interpretative technique of the use of precedents.

Where the interpretative issues have a common base, however, the tax practitioner in the United States might well obtain valuable information by analyzing the Canadian decisions for a fresh approach even though he cannot cite them as precedents. For example, the value of property acquired by gift is excluded from the definition of taxable income in both Canada and the United States.[27] Here something more than a mere "squeezing of words of a statute" is needed in order to solve many controversies involving the issue of whether a particular payment was a gift or, for example, taxable income as compensation for services. The practitioner by an analysis of Canadian decisions on the subject may well find new insights to a particular gift problem with which he is concerned. And, of course, comparison of interpretative issues can also round out a comparative study of a policy issue.

IV Conclusion

This discourse hardly constitutes a catalog of the numerous benefits that would flow from comparing income tax problems in the United States with those in Canada. Left untouched is the area of tax practice and its many problems. Today, for example, the tax practitioner is grappling with the problem of marking out the area of service between the lawyer and the accountant.[28] Would not a comparative study of the similar problem—or an inquiry into why there is not a similar problem—in Canada suggest enlightenment and insights to the struggle at home?[29] The benefit to the

27 Int. Rev. Code § 102(a) (United States), Income War Tax Act, § 3(1)(a) (Canada). The Income Tax Act does not contain a specific exclusion but the "exclusion from income of amounts received by gift is well established in English common law and has been reaffirmed by the Canadian courts." LaBrie. *op. cit. supra* note 18, at 197 (Footnotes omitted.)

28. See *e.g.*, Griswold, *We Can Stop The Lawyer-Accountant Conflict Over Tax Practice Now· Four Recommendations,* 2 J. Taxation 130 (1955), Note, 39 Minn. L. Rev. 873 (1955).

29. It should be noted that Dean Griswold relates "I have shown the Agran opinion [denying an accountant recovery of the value of his professional services on grounds he was practicing law] to an English solicitor. He finds it very interesting, but says that there would be no question in England that an accountant could properly do what Mr. Agran did, and be paid for it. He thinks that the solicitors may have been somewhat asleep and remiss, but there is no doubt as to what the legal status of the English accountant is in this area." Griswold, *supra,* note 28, at 137

public from a satisfactory solution of this problem is self-evident, not to mention the salutary effect on the two professions. Perhaps the majority of the benefits suggested from comparative tax studies are of this nature—benefits that would flow to the public as a whole. Yet there are more immediate values of a personal nature as well. The flow of American capital into Canada suggests a practical need for knowledge of things Canadian. Personal advantage here is obvious. The prestige from comparative research and its effect as a countermeasure to atrophy to say nothing of the satisfaction flowing from contributing to tax theory and policy, are all suggestive of personal values.

Undoubtedly there will be many instances where the lack of accessible materials will render comparative research in depth impracticable. But in the larger urban centers and the better law school libraries sufficient materials are available. The principal obstacle here would seem to be simply inertia or a failure to appreciate the values flowing from such research.